

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

| | | |
|------------------------------------|---|--------------------|
| MOHAMED A. ALI |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 205,614 |
| PIZZA HUT, INC. |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| TRAVELERS INSURANCE COMPANY |) | |
| Insurance Carrier |) | |

ORDER

Claimant appealed the May 11, 1999 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for an August 15, 1995 accident and resulting right eye injury. Finding that claimant's double vision and other eye problems are not related to the August 1995 accident, the Judge denied claimant's request for benefits.

FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds:

1. Mr. Ali was employed by Pizza Hut, Inc. As Mr. Ali was reporting to work on the morning of August 15, 1995, a co-worker dropped a number of fluorescent bulbs sending glass shards in every direction. Mr. Ali testified that he immediately felt pain in his right eye and it began bleeding. He immediately sought treatment at a nearby hospital emergency room.
2. In addition to claiming that the accident caused him double vision, Mr. Ali also contends that one of the doctors who examined him damaged his eyes with chemicals.
3. Mr. Ali's hospital emergency room records were introduced at the preliminary hearing. Those records do not indicate that Mr. Ali's eye was bleeding. Conversely, the emergency room doctor was unable to find any foreign body in the eye and found no evidence of a corneal abrasion. After irrigating the eye, the eye pain resolved.

4. On September 1, 1995, Mr. Ali consulted Samuel W. Amstutz, M.D., at the Eye Clinic of Wichita. At that time, Mr. Ali complained of decreased visual acuity in the right eye with tearing and a small black spot moving in the right eye's visual field. The doctor found no foreign body in the eye at that visit.

5. On November 29, 1995, Mr. Ali returned to the Eye Clinic and was examined by Dasa V. Gangadhar, M.D. At that time, Mr. Ali again reported a foreign body sensation in his right eye, a large floater in the eye, glare at night, inability to drive, and double vision. The doctor found no foreign body but did diagnose a refractive error and a vitreous floater. The doctor instructed Mr. Ali to obtain glasses. In a December 6, 1995 letter to attorney Alexander Mitchell, the doctor stated that he found no evidence of residual damage from a foreign body. The letter also indicated that the floater was a common finding but it was not related to the injury at Pizza Hut.

6. On February 26, 1996, Dr. Gangadhar saw Mr. Ali again. Mr. Ali reported right-side headaches and double vision in both eyes with and without glasses.

7. On April 4, 1996, David A. Johnson, M.D., of the Eye Clinic examined Mr. Ali. At that time Mr. Ali reported double vision in both eyes, pain behind the right eye, and a floater in the right eye. The doctor then obtained a CT scan, which was normal. The doctor felt that Mr. Ali might have a convergence insufficiency. In his April 10, 1996 letter to Dr. Gangadhar, Dr. Johnson indicates that he doubts his findings are related to the presumed old foreign body injury at Pizza Hut.

8. On April 29, 1996, Dr. Gangadhar saw Mr. Ali again. Mr. Ali reported that his double vision was worsening, that he was having headaches on the right side of his head, and that his right eye was itching and watering. The doctor referred Mr. Ali to Scott M. Carpenter, O.D., at the Eye Clinic for assessment and treatment.

9. Mr. Ali saw Dr. Carpenter on both May 7 and May 20, 1996. The doctor instructed Mr. Ali to obtain glasses and suggested that he may need vision therapy to treat the convergence insufficiency that had been diagnosed earlier. In his letter to attorney Mitchell dated May 8, 1996, Dr. Carpenter states that the only abnormality that he found was incorrectly manufactured glasses. In his June 6, 1996 letter to Joseph B. Sullivan, O.D., Dr. Carpenter states that he does not believe the convergence insufficiency is related to the accident at work as it is more probably a naturally occurring phenomenon unrelated to the trauma.

10. On June 18, 1997, Dr. Amstutz completed a document for Travelers Insurance Company indicating that he did not believe that Mr. Ali sustained any permanent impairment to his eye from the accident at Pizza Hut. Further, the doctor indicated that Mr. Ali's convergence insufficiency was not related to that accident.

11. Doctors Gangadhar, Johnson, Carpenter, and Amstutz all have indicated that their findings are not related to the Pizza Hut incident. Considering the greater weight of the medical evidence, the Board adopts and affirms the Judge's finding and conclusion that Mr. Ali's present eye problems are not related to the August 15, 1995 accident at Pizza Hut.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.
2. Mr. Ali has failed to prove that the eye and vision problems that he now has are related to the August 15, 1995 incident at Pizza Hut.
3. As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.¹

WHEREFORE, the Board affirms the preliminary hearing Order entered by Judge Clark dated May 11, 1999.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

c: Mohamed A. Ali, 1138 N. Dellrose, Wichita, KS 67208
Gregory D. Worth, Lenexa, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 1998 Supp. 44-534a(a)(2).